

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA



CHARLES L. NAIL, JR.  
BANKRUPTCY JUDGE

FEDERAL BUILDING AND UNITED STATES POST OFFICE  
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March 30, 2010

Bruce J. Gering  
Assistant United States Trustee  
314 South Main Avenue, Suite 303  
Sioux Falls, South Dakota 57104-6462

Wanda L. Howey-Fox, Esq.  
Attorney for Debtors  
Post Office Box 18  
Yankton, South Dakota 57078

Subject: ***In re Edward Gene Meng, Sr. and Tammy Lynn Meng***  
Chapter 7; Bankr. No. 10-40116

Dear Mr. Gering and Ms. Howey-Fox:

The matter before the Court is the United States Trustee's Motion to Dismiss. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying order shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014(c). As discussed below, the United States Trustee's motion will be granted.<sup>1</sup>

**Facts.** Tammy Lynn Meng completed credit counseling on September 1, 2009. She and her husband, Edward Gene Meng, Sr., filed a petition for relief under chapter 7 of title 11 on March 1, 2010.

**Discussion.** An individual may not be a debtor under title 11 unless she receives credit counseling within the 180-day period preceding the date of the filing of her petition for relief. 11 U.S.C. § 109(h)(1). Section 109(h)(1) is clear and unambiguous. The event that triggers the 180-day period is the filing of a petition for relief, not the completion of credit counseling, and the Court must count backward from the petition date, not forward from the date credit counseling is received.<sup>2</sup>

To compute the relevant 180-day period, the Court must exclude the petition date, Fed.R.Bankr.P. 9006(a)(1)(A), count every day, including intermediate Saturdays, Sundays, and any legal holidays, Fed.R.Bankr.P. 9006(a)(1)(B), and include the 180<sup>th</sup> day, unless the 180<sup>th</sup> day is a Saturday, Sunday, or legal holiday. Fed.R.Bankr.P.

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<sup>1</sup> The material facts are not in dispute. The issue presented is purely a question of law. Thus, no hearing was held.

<sup>2</sup> Had Congress intended otherwise, it could have required a debtor to file her petition within 180 days of completing credit counseling.

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9006(a)(1)(C).<sup>3</sup> In this case, the 180<sup>th</sup> day was Wednesday, September 2, 2009, and it was not a legal holiday.

Ms. Meng did not receive credit counseling within the 180-day period preceding the date of the filing of her petition for relief. Consequently, she may not be a debtor in this case. The Court will enter an appropriate order.

Sincerely,



Charles L. Nail, Jr.  
Bankruptcy Judge

CLN:sh

cc: case file (docket original; serve letter decision on parties in interest; serve order on all creditors and other parties in interest)

NOTICE OF ENTRY  
Under Fed.R.Bankr.P. 9022(a)

This order/judgment was entered  
on the date shown above.

Frederick M. Entwistle  
Clerk, U.S. Bankruptcy Court  
District of South Dakota

On the above date, a copy of this document was mailed or faxed to the parties shown on the Notice of Electronic Filing as not having received electronic notice and Debtor(s), if Debtor(s) did not receive electronic notice.

Frederick M. Entwistle  
Clerk, U.S. Bankruptcy Court  
District of South Dakota

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<sup>3</sup> If the 180<sup>th</sup> day is a Saturday, Sunday, or legal holiday, the 180-day period would be extended backward to the next preceding day that was not a Saturday, Sunday, or legal holiday. Fed.R.Bankr.P. 9006(a)(1)(C) and (5).